UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In Re: BRIDGE STONE/FIRESTONE, INC. TIRES PRODUCTS LIABILITY LITIGATION	Master File No. IP 00-9374-C-B/S MDL No. 1373
JUAN PABLO ANDRES ALONSO and DAMIAN DARIO DI NANNO, Plaintiffs, vs. FORD MOTOR COMPANY AND BRIDGESTONE/FIRESTONE, INC., Defendants and CARLOS MIGUEL PASTOR, individually and as Personal Representative of the ESTATE of GABRIELA ELISABETH PASTOR, et al., Plaintiffs, vs. BRIDGESTONE/FIRESTONE NORTH AMERICAN TIRE, LLC, et al., Defendants.	Case No. IP-04-C-5796-B/S Case No. IP-04-C-5812-B/S

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS ARGENTINIAN ACCIDENT CASES ON *FORUM NON CONVENIENS* GROUNDS

Defendants, Ford Motor Company ("Ford") and Bridgestone/Firestone North

American Tire, LLC, successor to Bridgestone/Firestone, Inc. ("Firestone") (collectively "Defendants"), filed a motion to dismiss two Argentinian accident cases on grounds of *forum non conveniens*.[1] For the reasons set forth in detail below, Defendants' motion to dismiss the case brought by Plaintiffs Juan Pablo Andres Alonso and Damian Dario Di Nanno ("Alonso/Di Nanno") in cause number IP-04-C-5796-B/S, and the case brought by Plaintiff Carlos Miguel Pastor et al. ("the Pastor Plaintiffs") in cause number IP 04-C-5812-B/S, on *forum non conveniens* grounds is GRANTED.

Procedural Background

Approximately 700 personal injury and wrongful death cases against Ford and/or Firestone have been filed in or removed to federal courts around the country alleging that defects in Ford Explorers and certain models of Firestone tires were responsible for accidents causing the injuries suffered by plaintiffs. The cases were transferred to this court by the Judicial Panel on Multidistrict Litigation ("MDL") pursuant to 28 U.S.C. § 1407. A number of these cases were filed by plaintiffs who were injured in accidents that occurred in foreign countries. This entry pertains to two cases where the plaintiffs are Argentine citizens and residents who were injured in accidents in Argentina.[2] (Pastor Comp. ¶ 18; Alonso Comp. ¶ 6).

On July 18, 2003, Plaintiffs Alonso/Di Nanno filed their original complaint in the

[1] See Firestone's Notice of Pending Motion to Dismiss, December 9, 2006 (MD 3640) (detailing titles and dates of all filings related to the pending motions).

[2] Similarly, in both cases, all vehicle occupants are/were Argentine citizens and residents. (Pastor Comp. ¶ 1; Exh. A at #1, #6; Alonso Comp. ¶¶ 1-2, 5.)

United States District Court for the Eastern District of North Carolina. On March 2, 2004, the case was transferred by the MDL panel to this court. On May 25, 2004, Ford filed a Motion to Dismiss Plaintiffs Alonso/Di Nanno's claims on *forum non conveniens* grounds and on June 7, 2004, Defendant Firestone joined in this Motion. (Docket Nos. 2314 and 2348.) On August 29, 2005, Plaintiffs requested additional time to respond to Defendants' Motion to Dismiss. (Docket No. 3177.) On October, 12, 2005, we granted this extension of time allowing Plaintiffs until November 14, 2005, to submit their response. (Docket No. 3244.) On November 17, 2005, Plaintiffs submitted "Plaintiffs Answers [sic] Order on Status Conference." (Docket No. 3288.) Although this submission was untimely, we shall consider it to the limited extent that it benefits our analysis of whether dismissal on *forum non conveniens* grounds is proper.[3]

The Pastor Plaintiffs originally filed their complaint in Broward County, Florida, and their case was subsequently removed by Defendants to the United States District Court for the Southern District of Florida. Upon removal, the case was transferred by the MDL panel to this court. (Pastor Defs.' Motion to Dismiss at 2.)[4] On November 15,

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[3] The Alonso/Di Nanno Plaintiffs were represented by counsel when first filing their complaint; however, on May 10, 2004, their attorneys' motion to withdraw was granted and these Plaintiffs have since proceeded pro se. (IP 04-5796 at Docket No. 14). In the analysis section of this entry, we refer to "Plaintiffs" arguments and, in this context, "Plaintiffs" refers to both Alonso/Di Nanno and the Pastor Plaintiffs. Although Alonso/Di Nanno did not directly respond to Defendants' Motion to Dismiss, in the interest of justice and because the arguments appear to be the substantially similar to those advanced by the Pastor Plaintiffs, we incorporate the Pastor Plaintiffs arguments on behalf of Alonso/Di Nanno as well.

[4] The Pastor Plaintiffs take exception to the term "was transferred" in this context. Plaintiffs argue that defendants requested that the MDL panel transfer the case to this court and (continued...)

2004, Defendants[5] collectively filed a motion to dismiss Pastor v. Bridgestone/Firestone et al. based on *forum non conveniens*. (See Docket No. 2656.) This motion has been fully briefed by counsel, with each party filing supplemental authorities in support of its respective position.[6]

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[4](...continued)
that the "United States cannot simultaneously be the most convenient forum for the vast amount of core-liability discovery that has been completed in this case . . . but the least convenient forum for the trial in which this core discovery will be used." Pastor Pl s.' Resp. at 2.

[5] Defendants in this case in addition to Ford and Bridgestone/Firestone include: TRW Automotive US LLC (as assignee of the former TRW Inc. n/k/a Northrop Grumman Space & Mission Corp.), and TRW Vehicle Safety Systems, Inc. ("TRW").

[6] On July 11, 2005, Plaintiffs filed a "Motion to Strike Affidavit of Keith Rosenn or for Leave to File Surreply." [See MD 3108 (Motion to Strike), MD 3666 (Original Aff. of Rosenn); MD 3085 (Reply Aff. of Rosenn).] Plaintiffs argue that Prof. Rosenn's affidavit is inappropriate to attach to a reply brief because it "cites previously uncited materials on Argentine law," and "is laced with speculative and argumentative assertions about Argentine law, and with partisan, dismissive comments on the opinions of Plaintiffs' foreign law experts." Pls.' Motion to Strike at 2. We find that Prof. Rosenn's affidavit should not be stricken. We are not aware of a rule which limits Defendants to sources previously cited in support of their reply brief. The affidavit responds to assertions made by Plaintiff's expert, Dr. Arcagni, and is useful in resolving complex issues of foreign law. For these reasons, Plaintiffs' Motion to Strike is DENIED. As for the motion for leave to file surreply, Plaintiffs acknowledge that the local rules do not provide for a surreply in this instance and we do not believe one is warranted here. Plaintiffs had their opportunity under Fed. R. Civ. P. 44.1 to submit any relevant material which they believed would be useful to the Court in determining the law of Argentina. Thus, Plaintiffs' Motion to File a Surreply is DENIED.

On November 27, 2006, Plaintiffs filed a motion titled "Plaintiff's [sic] Motion for Leave to Amend Complaint." Plaintiffs state that this new complaint would merely add a claim for punitive damages. Pls.' Motion to Amend at 4 [MD 3626]. Defendants object to this motion. See MD 3660. We note this pending motion only to indicate that it has been considered to the limited extent of determining whether granting the Motion to Amend would affect the outcome of this Motion to Dismiss. We find that, because it merely adds a claim for punitive damages, it has no effect on the outcome of this motion to dismiss and for this reason the motion to amend complaint is DENIED as MOOT.

Factual Background

Plaintiffs Alonso and Di Nanno (IP-04-5796-C-B/S)

Plaintiffs Alonso and Di Nanno are both residents and citizens of Argentina. (Compl at ¶¶ 1 and 2; and Def. Motion to Dismiss Alonso and Di Nanno at 1.) They allege that the accident at issue here occurred on July 20, 2001, at approximately 11:00 p.m., on Route No. 8 (a four-lane highway), in Pilar, Buenos Aires Province, Argentina. Compl. ¶ 6. Alonso was driving a 1998 Ford Explorer XLT at approximately 90 km/hour, and, as he approached a traffic light, the Firestone tire failed, causing the Ford Explorer to roll over repeatedly, thereby resulting in injury to both Alonso and Di Nanno. (Comp. ¶ 7; Alonso's Answers Order on Status Conference, November 17, 2005, MD 3288.)

Plaintiff Carlos Miguel Pastor, individually and as Personal Representative of the Estate of Gabriela Elisabeth Pastor, et al. (IP 04-5812)

Plaintiffs Miguel Pastor and Rosa Elisabeth Urdin, both individually and as Personal Representatives of the Estate of Gabriela Elisabeth Pastor, and Plaintiffs Rosa Ignacia Phoyu and Andres Miguel Pastor (collectively "the Pastor Plaintiffs") seek damages resulting from an automobile accident occurring in Argentina on March 1, 2003, between 6:30 and 7:00 p.m. (See Def. Exh. F – Police Report.) Carlos Miguel Pastor, an Argentine citizen and resident, was driving a 1995 Ford Explorer along a national road in the City of General Conesa, District of Tordillo, Province of Buenos Aires, Republic of Argentina when the vehicle rolled over. (Comp. ¶ 1, 18; Exh. A – Carlos Miguel Pastor's

Notice of Filing Unverified Answers to Interrogatories by Ford # 1, #6.) Gabriela Elizabeth Pastor, Rosa Ignasia Urdin, Rosa Elizabeth Urdin and Andres Miguel Pastor were passengers in the vehicle and all are/were Argentine citizens and residents. (Comp. ¶ 1; Exh. A at #1, #6.) The vehicle was purchased, registered, insured, maintained and driven only in Argentina. (Exh. A at #7, #9; Exh. B- Registration; Exh. C - Insurance.) The accident resulted in fatal injuries to Gabriela Elizabeth Pastor and bodily injuries to all other vehicle occupants. (Comp. ¶ 18.)

Defendants contend that both actions should be dismissed under the doctrine of *forum non conveniens*. (Pastor Defs.' Motion to Dismiss at 1; Alonso Defs.' Motion to Dismiss at 1, MD 2314.)

Defendants assert that if either case is dismissed they will stipulate to:

> (a) submit to the jurisdiction of the Argentine courts for [that] action; (b) accept service of process from the courts of Argentina in [that] matter; (c) pay any final judgment rendered against them in Argentina resulting from [that] action, subject to applicable rights to contest or appeal under international and/or Argentine law; and (d) treat the action filed in Argentina as though it had been filed in that forum on the date it was originally filed in the United States, with service of process accepted as of that date.

(Pastor Defs.' Motion to Dismiss at 2, see also Alonso Defs.' Motion to Dismiss at 1 (proposed stipulation similar in all respects.)

Legal Analysis

Under the doctrine of *forum non conveniens*, "a trial court may dismiss a suit over which it would normally have jurisdiction if it best serves the convenience of the parties

and the ends of justice." Kamel v. Hill-Rom Co., Inc., 108 F.3d 799, 802 (7th Cir. 1997) (citations omitted). As defendants in this case, Ford and Firestone "bear [ ] the burden of persuasion as to all elements of the *forum non conveniens* analysis." In re Bridgestone/Firestone, Inc., 305 F. Supp. 2d 927, 932 (S.D. Ind. 2004) [hereinafter Cisneros] (discussing a motion to dismiss for *forum non conveniens* related to automobile accidents which occurred in Mexico). In resolving a *forum non conveniens* motion, "plaintiff is entitled to have any conflicts in the affidavits resolved in its favor." RAR, Inc. v. Turner Diesel, Ltd., 107 F.3d 1272, 1275 (7th Cir. 1997). Defendants must first establish that an adequate alternative forum is available to hear the case. "If this threshold criterion is satisfied, then the court must identify various private and public interest factors and balance them to determine whether dismissal is appropriate." Id.

Adequate Alternative Forum

The first step, as with any *forum non conveniens* analysis, is to determine whether there are adequate alternative forums in which to hear these cases. Cisneros, 305 F. Supp. 2d at 932 (citing Piper Aircraft Co. v. Reyno, 454 U.S. 235, 254 n. 22, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981)). Such a determination involves a "two-part inquiry: availability and adequacy." Kamel, 108 F.3d at 802.

1. Argentina is an "available alternative forum."

A forum is "available" if "all parties are amenable to process and are within the forum's jurisdiction." Kamel, 108 F.3d at 802 (citing Piper, 454 U.S. at 254 n. 22, 102

S.Ct. 252). "Ordinarily, this requirement will be satisfied when the defendant is 'amenable to process' in the other jurisdiction." Piper, 454 U.S. at 255 n. 2 (quoting Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 506-07 (1947); Kamel, 108 F.3d at 803; Satz v. McDonnell Douglas Corp., 244 F.3d 1279, 1282 (11th Cir. 2001).

In this case, as a condition of dismissal, Defendants state that they will submit to the jurisdiction of the Argentine courts. (Pastor Defs.' Motion to Dismiss at 11-12; Alonso Defs.' Brief in Supp. at 8.) Defendants maintain that their willingness to submit to the jurisdiction of the Argentine courts makes them "amenable to process" in Argentina, "making that forum 'available' pursuant to Piper." (Pastor Defs.' Motion to Dismiss at 12.)

a. *Consent to Argentine Jurisdiction*

Plaintiffs' experts assert that, even if Defendants consent to jurisdiction in Argentina, an Argentine court would not accept jurisdiction because, by law, consent jurisdiction is permissible only in matters exclusively patrimonial,[7] and in any event a plaintiff cannot be compelled by a *forum non conveniens* dismissal to voluntarily consent

[7] Patrimonial disputes involve disputes about monetary liability or property rights including the tort and contractual claims such as those at the heart of this lawsuit. However, because the complaint includes a cause of action under Florida's "Sunshine in Litigation Act," which prohibits execution of a settlement agreement or entry of an order "which has the purpose or effect of concealing a public hazard . . . ." and plaintiffs seek a "declaratory judgment" under that statute and an order revoking previous protective orders, Plaintiffs' expert, Dr. Rotman, contends that this litigation does not include exclusively patrimonial issues. Pastor Pls.' Resp. at 7-8. In response, Defendants' expert, Prof. Rosenn, notes (correctly in our opinion) that, if the Pastor Plaintiffs' case is dismissed and refiled in Argentina's civil law jurisdiction, Plaintiffs would no longer have a cause of action for violation for the Florida Sunshine in Litigation Act, making the complaint exclusively patrimonial. Rosenn Aff. ¶ 15.

to Argentine jurisdiction. Defendants' offer to submit to Argentine jurisdiction, therefore, according to Plaintiffs, would not be cognizable or enforceable in Argentina. (Pastor Pls.' Resp. at 5; citing App. 33-35, 36-38.)

Defendants respond that, pursuant to the Federal Code of Civil and Commercial Procedure, Articles 1 and 2, an Argentine court would acquire jurisdiction over this case by virtue of the parties' consent. (Exh. S at ¶ 19.) Art. I of the Federal Code of Civil and Commercial Procedure provides:

> Art 1. – Character. The jurisdiction attributed to national tribunals may not be extended. Without prejudice to the provisions of international treaties and art. 12, subparagraph 4, of Law 48, an exception shall be made for territorial jurisdiction in matters exclusively patrimonial, which may be extended in conformity with the parties. If these are matters of an international nature, the extension may be permitted, even in favor of foreign judges or arbitrators who act outside of Argentina, except in cases in which Argentine tribunals have exclusive jurisdiction or when this extension is prohibited by law.

Article 2 of the same procedural code provides that a party may consent to jurisdiction, either expressly by written agreement or implicitly by filing a complaint or answer. Article 2 provides:

> Article 2. – Express or tacit extension. Extension operates if it arises from a written agreement in which those interested parties explicitly manifest the decision to submit themselves to the jurisdiction of the judge whom they seek. Likewise, by the plaintiff, by the act of filing the complaint; and with respect to the defendant, when answering, by failing to make or oppose prior exceptions without raising the defense of lack

of jurisdiction.

In his reply affidavit, Professor Keith S. Rosenn[8] explains that an Argentine court will accept jurisdiction if these cases are refiled in Argentina after dismissal for *forum non conveniens* based on consent. Defendants have agreed to consent to the jurisdiction of the Argentine courts, and, as even Plaintiff's expert, Dr. Arcagni, acknowledges, the parties are free to choose the forum, pursuant to Article 1 of the Federal Code of Civil and Commercial Procedure. By filing the complaint, the Plaintiffs consent to the jurisdiction of the court. By answering the complaint and failing to raise the issue of lack of jurisdiction, the Defendants will be deemed to have consented to the jurisdiction of the Argentine courts. Thus, it is likely that no issue of jurisdiction will even arise before the Argentine courts. Rosenn Aff. at ¶7.

We do not find persuasive Plaintiffs' argument that a court could not find that the Plaintiffs consented to Argentine jurisdiction following a *forum non conveniens* dismissal. See generally Pastor Pls.' Resp. at 5. A *forum non conveniens* dismissal will always exert pressure on the dismissed plaintiff to refile the action in the alternative forum after the suit has previously been dismissed. If this case is dismissed, Plaintiffs have the choice of refiling it in Argentina or not refiling it at all. If they do refile, they will have consented to Argentine jurisdiction. Further, as explained below, the fact that

[8] Professor Rosenn received his law degree from Yale University in 1963, practices law in Florida, and is full Professor of Law at the University of Miami teaching courses in Latin American Law and Comparative Law.

Plaintiffs may only assert their "patrimonial" claims in Argentina (which are the claims at the heart of this case) does not make Argentina a "clearly unsatisfactory" forum. See Satz, 244 F.3d at 1283 ("There is adequate support in the record that the remedies available to the plaintiffs in Argentina are neither 'clearly unsatisfactory' nor do they amount to 'no remedy at all.'"). For these reasons, we find that by virtue of Defendants' consent to Argentine jurisdiction, Argentina is an alternative available forum.

b. *Jurisdiction based on Contract*

In addition, Defendants assert that jurisdiction in Argentina may be premised on the contract of purchase of the vehicle. Rosenn Aff. at 10. Prof. Rosenn explains that Argentine jurisdiction could be predicated upon Article 1215 of the Argentine Civil Code, which provides:

> Art. 1215. In all contracts that must be performed in the Republic, the debtor may be sued in Argentine courts, even if the debtor were not domiciled in Argentina or resided therein.

Similarly, Article 5(3) of the Federal Code of Civil and Commercial Procedure provides that the courts located in the place where a contract must be performed have jurisdiction to hear personal causes of action based upon contract liability.[9] Rosenn Aff. at ¶18. Defendants contend that if there is an implied contractual liability between Defendants and the Argentine purchaser of the Ford vehicle, it must arise from the buyer's purchase

[9] Professor Rosenn explains that in "1981, the Eighth National Meetings of Civil Law in La Plata took the position that [] 'the manufacturer assumed vis-a-vis the acquirer a duty of security for the damages that the product may cause.' In 1988, the National Court of Appeals of the Capital held that the sale of an automobile carried an implicit obligation of security that gave rise to a contractual duty to indemnify the buyer if defective."

of the vehicle in Argentina. Rosenn Aff. ¶ 19.

Plaintiffs experts, Dr. Jose Carlos Arcagni, "a specialist in the Argentine private international law" and a "professor of private international law [at] the Universidad Austral," and Professor Edgardo Rotman, a law professor at the University of Miami School of Law[10] also concluded that Argentina contract law would apply in these cases as contract law applies to all cases brought under Argentina's Consumer Protection Law. (Pastor Pls.' Resp. at 4.) However, Plaintiffs' experts, argue away from that concession, asserting that, under Argentina contract law:

> the United States is the place where the defendants breached their consumer contract since the defective products in this case were designed and manufactured in this country. Because no liability-creating act occurred in Argentina (indeed, the Defendants performed no act whatsoever in Argentina), the jurisdictional principles expressed in Articles 1215 and 1216 of the Civil Code – requiring suit to be brought in the country where the contract was "performed" – deprived Argentina of jurisdiction over the plaintiffs' claims.

Pastor Pls.' Resp. at 4.

We are not persuaded by Plaintiffs' analysis. Clearly, Defendants performed a liability-creating act in Argentina: they introduced their products into the stream of Argentine commerce. Any implied contractual liability of Defendants to the Argentine consumer arises from the sale of Ford vehicles in Argentina by Ford dealerships. The place of performance of such contracts is Argentina, where Plaintiffs' contracts were

[10] Professor Rotman received his law degree in Argentina and formerly practiced law in Argentina.

entered into.

c. *Jurisdiction based on Argentine Tort Law*

Defendants further contend that Plaintiffs' tort claims may be predicated upon Article 5 (3) of the Federal Code of Civil and Commercial Procedure, because Argentina was the place of the alleged torts, or under Article 5 (4) of the Federal Code of Civil and Commercial Procedure, pursuant to the principle of *lex loci delicti*.[11] Article 5(4) provides:

> Art. 5(4). In personal actions stemming from delicts and quasi-delicts, [the judge with jurisdiction] is the one at the place of the act or the domicile of the defendant, at the election of the plaintiff.

Plaintiffs' experts maintain that, even if the causes of action are deemed to allege torts under Argentine law, Argentina would likewise deem the wrongful acts to have occurred in the country of manufacture. Plaintiffs argue that Defendants' expert, Prof. Rosenn, incorrectly claims that Argentina would have jurisdiction over plaintiffs' action under Article 5(4) of the Federal Code (Pastor Pls.' Resp. at 9; citing Aff. at 7-8.), contending that Article 5(4) "confirms that Argentina would respect and enforce the plaintiffs' 'election' of a United States forum" because "[t]he United States is the 'domicile' of the Defendants and 'the place' where their tortious acts of negligent design,

[11] *Lex loci delicti* means: "The law of the place where the tort was committed." BLACK'S LAW DICTIONARY 7TH ed.

manufacture, and decision not to warn occurred." Pastor Pls.' Response at 10.[12] After all, they argue, Defendants performed no acts whatsoever in Argentina, and, "under Article 5(4) of the Federal Code, jurisdiction lies only where the Defendant resides or the wrongful act occurred." Pastor Pls.' Resp. at 5.

Although the Ford vehicle and Firestone tire were designed and manufactured in the United States, we are convinced that an Argentine court would accept jurisdiction over these disputes and apply Argentine law to any automobile accident that occurred in Argentina involving death and serious injuries to Argentine victims, which was allegedly caused by defective automobiles introduced into the stream of Argentine commerce by new car dealers in Argentina and sold to an Argentine consumers. Further, under Argentine law, it seems clear that no tort obligation to the Plaintiffs would have been breached unless and until the time of the accident, for if there is no harm, no products liability tort arises. Juan Javier Negri, *Argentina*, in 1 PRODUCTS LIABILITY: AN INTERNATIONAL MANUAL OF PRACTICE 9 (Warren Freedman ed. 1990).

Applicable United States case law supplies additional confidence for our

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[12] Plaintiffs also submit the views of three practicing Argentine lawyers, Dr. Vicente Serviddio, Pablo Pinnel and Maria Pintos. Dr. Serviddio, plaintiffs' Argentine lawyer, allegedly refused to take plaintiffs' products liability case because he thought it was impossible to conceive of an Argentine court exercising jurisdiction over these defendants. Similarly, Pinnel and Pintos assert their agreement with plaintiffs that an Argentine court would not have jurisdiction to hear this case because: (1) Count IV is not an "exclusively patrimonial" matter because the relief it requests is not "related to assets"; (2) since this case involves foreign defendants, both sides must agree to submit to Argentine jurisdiction; and (3) the parties' submission may not be to Argentine jurisdiction, generally, but must be to a "given" or specific Argentine court or "territorial jurisdiction." Pastor Pls.' Resp. at 10.

conclusion that Argentina is an available forum. In Satz v. McDonnell Douglas Corp., the Eleventh Circuit affirmed the dismissal of products liability claims brought in the Southern District of Florida by the personal representatives of Argentine decedents who had died as a result of an airline accident involving an aircraft designed and manufactured in the United States by McDonnell Douglas Corporation.[13] 244 F.3d 1279 (11th Cir. 2001). In holding that dismissal was proper, the Eleventh Circuit specifically found that Argentina was an available and adequate alternative forum.[14] Id. at 1282-83. Similarly, in Pacheco v. Ford Motor Co. Case No. 02-21380-CIV-HIGHSMITH, consolidated with Brandalise v. Ford Motor Co., Case No. 02-2325-CIV-HIGHSMITH, Paolicelli v. Ford Motor Co., Case No. 03-21254-CIV-HIGHSMITH, and DeBenso v. Ford Motor Co., Case No. 05-23302-CIV-HIGHSMITH (S.D. Fla. May 24, 2006) the United States District Court for the Southern District of Florida dismissed product liability lawsuits filed by Argentinian citizens on the basis of *forum non conveniens*, finding that Argentina was an adequate and available alternative forum. See also Sosa v. Ford Motor Company, Case No. 06-20984 (S.D. Fla. July 7, 2006) (dismissing lawsuit arising out of automobile accident in Argentina based on *forum non conveniens*); but see Nowell v. Ford Motor Company, Case No. 03-2693 (08) (17 Jud. Cir. Broward County Fla. December 15, 2003)

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[13] In Satz, plaintiffs and decedents were either Argentine residents or citizens and the flight, which originated in Posadas, Argentina, was en route to Buenos Aires, Argentina. Id. at 1281 n. 1.

[14] In Satz, as in this case, the Defendant consented to the jurisdiction of Argentine courts.

(denying defendants' motion to dismiss on *forum non conveniens* grounds, finding: "[T]his Court cannot ensure an Argentine court would not dismiss this case *sua sponte* for lack of jurisdiction."); Papandopoles v. Ford Motor Company Case No. 03-009934 (08) (17th Judicial Cir. Broward County Fla. Nov. 21, 2005) (same, denying defendants' motion to dismiss on *forum non conveniens* grounds). Accordingly, we conclude that jurisdiction over these defendants for the wrongs alleged could be established in an Argentine court.

2. Argentina is an "adequate" alternative forum.

"An alternative forum is adequate when the parties will not be deprived of all remedies or treated unfairly." Kamel, 108 F.3d at 803 (citing Piper, 454 U.S. at 255, 102 S.Ct. 252). "An adequate forum need not be a perfect forum." Satz, 244 F.3d at 1283.

Defendants argue that causes of action and damage remedies are available under Argentine law similar to those alleged and sought by the Plaintiffs in this case. (Pastor Exh. R at 405; Exh. S at ¶ 22.) Specifically, Article 1109 of Argentina's Civil Code provides a cause of action for damages caused by fault or negligence. (Pastor Exh. R at 5; Exh. S at ¶ 23; Alonso Defs.' Br. in Supp. at 11.) In addition, Argentina's Consumer Protection Law, Article 40, imposes joint and several strict tort liability on manufacturers, importers, distributors and sellers of defective products for all injuries caused to consumers by such products. (Pastor Defs.' Motion to Dismiss at 13; citing Exh. X at 5; Exh. S at ¶ 27; Alonso Defs.' Br. in Supp. at 11.) In terms of damages, Argentina authorizes recovery for economic and noneconomic damages. (Exh. R at 5.)

Defendants further contend that "[b]ecause there is a recognized cause of action for Plaintiffs' claims and available remedies, it is irrelevant whether a United States forum provides different or more favorable legal theories or remedies than would be available in Argentina." Pastor Defs.' Motion to Dismiss at 13, citing Piper, 454 U.S. at 255 ("although the relatives of the decedents may not be able to rely on a strict liability theory, and although their potential damages award may be smaller, there is no danger that they will be deprived of any remedy or treated unfairly"); see also Kamel, 108 F.3d at 803 (as long as the foreign forum "provide[s] some potential avenue for redress," that forum will be considered an adequate available forum for purposes of the *forum non conveniens* determination).

Prior cases have held that Argentina is an adequate forum for tort litigation involving American-made products, despite differences in Argentine and U.S. substantive and procedural law. See e.g., Satz v. McDonnell Douglas Corp., 244 F.3d 1279 (11th Cir. 2001) (described supra); Sosa, Case No. 06-20984.[15] Here, Plaintiffs present no fact or legal argument to distinguish their situations from those presented in the cited precedent.

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[15] Defendants provided two examples of automobile related cases where the plaintiff was able to recover damages in Argentina. See e.g., De Blasi de Musmeci, Claudia v. Sevel Argentina et al., 2002-1-LA LEY 860, J.A. 2002-II-34 (CNCom., sala C, 10/05/2001) (imposing a damage award against the manufacturer/distributor under the Consumer Protection Law for wrongful death and bodily injuries stemming from an accident caused by a defective Fiat purchased and driven in Argentina); TyCS.R.L. v. Fiat Auto Argentina S.A., 2004 La Ley B.A. 527 (ClaCiv. Y Com., Mar del Plata, sala II, 2003/07/08) (using Article 40 of the Consumer Protection Law to impose liability on the manufacturer of a car for expenses incurred by purchaser's employees while the vehicle was being repaired after a breakdown caused by a defect in the motor).

We conclude that Plaintiffs will not be deprived of all remedies or treated unfairly in Argentina, and therefore deem it to be an available and an adequate forum for Plaintiffs' claims.

Balancing the Interests

Having found Argentina to be both an available and an adequate forum, we turn to the task of balancing the private and public interest factors relating to the choice of forum. "Private factors are usually analyzed separately from public factors, and Defendants continue to bear the burden of persuasion as to this element of the *forum non conveniens* analysis." Cisneros, 305 F. Supp. 2d at 933; quoting In re Bridgestone/Firestone, Inc., 190 F. Supp. 2d 1125, 1134-35 (S.D. Ind. 2002) (internal citations omitted). Defendants must provide enough information to enable the court to fairly balance the parties' interests. Piper, 454 U.S. at 258, 102 S.Ct. 252. The court must have a basis upon which to "scrutinize the substance of the dispute between the parties to evaluate what proof is required, and determine whether the pieces of evidence cited by the parties are crucial, or even relevant, to the plaintiff's cause of action and to any potential defenses to the action." Cisneros, 305 F. Supp. 2d at 933; quoting Van Cauwenberghe v. Biard, 486 U.S. 517, 528, 108 S.Ct. 1945, 100 L.Ed. 2d 517 (1988). In Kamel, the Seventh Circuit held that dismissal is appropriate "when a trial in the chosen forum would result in vexation and oppression to the defendant which would far outweigh the plaintiff's convenience or when the chosen forum would generate administrative and legal entanglements for the trial court." 108 F.3d at 802.

At the outset, we note that "there is ordinarily a strong presumption in favor of the plaintiffs' choice of forum, which may be overcome only when the private and public factors clearly point towards trial in the alternative forum." Piper, 454 U.S. at 255, 102 S.Ct. 252 (citing Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508, 67 S.Ct. 839, 91 L.Ed. 1055 (1947)). However, this presumption applies with less force when the plaintiff is foreign because the central purpose of any *forum non conveniens* inquiry is to ensure that the trial is convenient, and suing in a United States forum while residing in a foreign country is less likely to be convenient. Id.; cited by Cisneros, 305 F. Supp. 2d at 933, 934. However, when plaintiff is a non-resident treaty national, from a country such as Argentina, which has ratified the International Covenant on Civil and Political Rights entitling treaty nationals residing in their home countries to the same deference on their choice of forum as resident United States nationals, then "the balance of private and public interest factors must do more than merely 'point towards' further proceedings [in the foreign forum]." In re Bridgestone Firestone, 190 F. Supp. 2d at 1137.

Thus, we apply a neutral rule comparing the relative convenience of the parties, a comparison which properly considers each party's residence. Having done so, we find that the plaintiffs' foreign residence weighs in favor of dismissal of this action. See In re Bridgestone/Firestone, Inc., 305 F. Supp. 2d 927, 933-34; Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88, 102 (2nd Cir. 2000); see also Interpane Coatings, Inc. v. Australia and New Zealand Banking Group Ltd., 732 F. Supp. 909, 914-15 (N.D. Ill. 1990) ("weighting of the scales in favor of the plaintiff is particularly appropriate where

the plaintiff is a resident of the forum he is suing in.").

Plaintiffs Alonso and Di Nanno originally filed their case in North Carolina; the Pastor Plaintiffs filed theirs in Florida. With regard to these foreign resident Plaintiffs, we find that both North Carolina and Florida (and any other district in the United States for that matter) is a less convenient forum to Argentina, which conclusion weighs in favor of dismissal on *forum non conveniens* grounds.[16]

Private Interest Factors

Next, we examine the private interest factors impacting the choice of forum. Important considerations concerning the private interests of the litigants include:

> the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing[] witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive [including] questions as to the enforcibility [sic] of a judgment if one is obtained.

Cisneros, 305 F. Supp. 2d 927 (S.D. Ind. 2004); quoting In re Bridgestone/Firestone, Inc., 190 F. Supp. 2d at 1137 (citing Gulf Oil, 330 U.S. at 508, 67 S.Ct. 839).

We "look first at ease of access to sources of proof, including documents and witness testimony, as they are often considered together." See, e.g., Roynat v. Richmond Transp. Corp., 772 F. Supp. 417, 422 (S.D. Ind. 1991). The relevant sources of proof in

[16] Consistent with prior opinions, we "examine[] the interests of the United States . . . rather than the particular interests of the Southern District of Florida . . . or any of the other districts from which these cases were transferred." In re Bridgestone/Firestone, Inc., 212 F. Supp. 2d 903, 911 (S.D. Ind. 2002).

this case are identical to those of other foreign accident cases arising in this MDL:

> The relevant sources of proof in this case may be divided into three categories, evidence of core liability, case-specific liability, and damages. Evidence of core liability relates predominantly to the design and manufacture of the allegedly defective products and to the timing of Defendants' awareness of the problems. The MDL is now in its final stages, and the discovery on these core liability issues was completed in early 2002.

In re Bridgestone/Firestone, Inc. 305 F. Supp. 2d at 934. Defendants have agreed, as a condition of dismissal, to provide Plaintiffs with access to all materials produced during the discovery phase of the MDL litigation.[17] See Piper, 454 U.S. at 258 n. 25; Cisneros, 305 F. Supp. 2d at 937; Rivas , 2004 WL 1247018, at *8. Plaintiffs argue that translating into Spanish the vast number of documents in this case related to core liability would be unduly burdensome, "not only because there are thousands if not millions of pages of them, but because their demanding scientific terminology will lower the speed of translation and require the services of the most skilled and highest paid translators." Pastor Pls.' Resp. at 21. Defendants reply that Plaintiffs' concerns about translation are exaggerated because they will not rely upon or introduce (or in any event be permitted to introduce) millions of documents.

It is clear that "most of the documents and witnesses related to the design, testing, and accident rates of [the defendants'] products are in this country" and that translating

[17] See Pastor Defs.' Motion to Dismiss at 18; Alonso Defs.' Br. in Supp. at 10. TRW is also willing to provide similar access to its design/manufacturing evidence. Pastor Defs.' Mot. to Dismiss at 18.

such documents from English to Spanish, "would be no small task." In re Bridgestone/Firestone, 190 F. Supp. 2d at 1139-40, 1142-43. While this is a factor which weighs against dismissal, it is just one factor, and we do not regard it as dispositive of the issue.[18] See Rivas, 2004 WL 1247018, at *1; Morales, 313 F. Supp. 2d at 672; Cisneros, 305 F. Supp. 2d at 927. We foresee translation issues arising as well if the Spanish-speaking Plaintiffs and witnesses must testify in the United States courts.

The second category of proof, case-specific liability, relates to the evidence Defendants will seek to introduce to defend against Plaintiffs' claims that the vehicles and/or tires were defective and the proximate cause of Plaintiffs' injuries. The Defendants have not committed to one particular defense, but we expect Defendants will seek to introduce case-specific evidence of lack of causation, contributory negligence, and third-party negligence.

In the Pastor case, the vehicle at issue was shipped to Argentina and sold to a car dealership there. (Pastor Exh. E - Affidavit of James Mason at ¶ 4.) The vehicle was then

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[18] In addition, Plaintiffs' expert, Prof. Rotman, contends that the "principle of immediacy" in Argentine jurisprudence "forces all evidence to go through the court and [makes] evidence produced outside the presence of the [Argentine] judge invalid." Pastor Pls.' Resp. at 30. Thus, if this trial proceeds in Argentina, Plaintiffs maintain that they will lose the benefit of the vast amount of discovery that has been accumulated in this case on core-liability issues which will have to be recreated in the presence of an Argentine judge. Id. In reply, Defendants' experts, Prof. Rosenn, Mr. Pinnel and Ms. Pintos, state that Plaintiffs' position is contrary to Federal Code of Civil and Commercial Procedure provisions which require that plaintiffs filing complaints attach documentary evidence in their possession in support of their claim. Pastor Defs.' Reply at 14. Thus, any core-liability evidence that Plaintiffs wish to submit could be produced with their complaint, and such evidence would necessarily have been produced outside the presence of the Argentine judge. Id.

purchased and insured in Argentina. (Pastor Exh. A at #7; Exhs. E and C.) The vehicle was allegedly serviced and maintained in Argentina, including replacement of the original tires. (Pastor Exh. A at #8(g), #9.) The accident was investigated by Argentine authorities, who have initiated an ongoing criminal investigation, including evaluations by experts.[19] (Pastor Exh. A at #7(f), #25, #29; Exh. D; Exh. F – Police Report; Exh. G - Updated Investigative Report; Exh. H - Certification of Accident Scene; Exh. I - Report by Mechanical Expert.) Plaintiffs state that the vehicle, including its tires, has been shipped to and is currently located in the United States.[20]

In the Alonso/Di Nanno case, Defendants assert that the vehicle's owner is in Argentina, and the vehicle was distributed, serviced, maintained and is currently located in Argentina. (Alonso Defs.' Brief in Supp. at 2.) Any accident investigation done by Argentine authorities and any witnesses and documentary evidence of the Alonso/Di Nanno accident is located in Argentina. (Alonso Defs.' Brief in Supp. at 2.)

The Pastor Plaintiffs argue that, in their case, all or most of the relevant Argentine documents have already been translated from Spanish to English and are in the parties'

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[19] In the Pastor case, a probate matter arising from this accident was instituted in Argentina. (Exh. N - Rosa Elizabeth Urdin, as Personal Representative, Notice of Filing Unverified Answers to Interrogatories Propounded by Ford.)

[20] Defendants disagree, asserting that the vehicle is currently in Argentina. For purposes of this motion, we assume that Plaintiffs are correct and that the vehicle and its tires are in the United States. (Pastor Defs.' Brief in Supp. at 4.)

possession in the United States. Pastor Pls.' Resp. at 19-20.[21] They contend that Defendants have failed to establish that any witnesses they would call to testify would not come voluntarily to the United States, or, in the alternative, that their depositions (taken in Argentina) would not be a sufficient substitute for live testimony. Pastor Pls.' Resp. at 17-18. Further, Plaintiffs contend that, if any significant evidence remains in Argentina, it can be accessed by the parties through Fed. R. Civ. P. 28(b), the Hague Convention on the Taking of Evidence Abroad, 14 I.L.M. 339 (1975), and the Additional Protocol, 18 I.L.M. 1238 (1979).[22]

Defendants reply that there are many individuals in Argentina who would have information relevant to this accident and suit. Pastor Defs.' Reply at 9. Further, there has not been any case-specific merits discovery in this case, given the stay entered after Defendants filed the *forum non conveniens* motion in state court. Pastor Defs.' Reply at 14. Given the stay, it is understandable that Defendants have not fully developed their

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[21] For example, the Pastor Plaintiffs have produced the vehicle's registration, Plaintiff's Interrogatories, Vehicle Insurance, Notification of Criminal Charges, Police Report, Updated Investigative Report, Certification of Accident Scene, Report of Mechanical Expert, and Medical Report. See Pastor Pls.' Exhs. to Defs.' Motion to Dismiss.

[22] Argentina ratified the Hague Convention subjection to the following Article 23 reservation: "The Argentine Republic will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in the Common Law Countries." Plaintiffs argue that this prohibition on pre-trial discovery will not affect depositions or interrogatories or the examination of documents, claiming that Article 23 has been interpreted in practice to prevent requests for documents that lack sufficient specificity or that have not been reviewed for relevancy by the requesting judge. Pastor Pls.' Resp. at 24. A United States judge "would be able to request documents from non-parties in [Argentina] with sufficient specificity to satisfy [Argentine] standards." Gomez v. Banco Bilbao Vizcaya, S.A., 1993 WL 204990, at *5-6. (S.D.N.Y. 1993), aff'd, 17 F.3d 390 (2d Cir. 1993).

defense or identified the specific witnesses they intend to call. Even so, Exhibit B to the Pastor Defendants' Reply in Support of Motion to Dismiss lists twenty-six persons in Argentina who potentially have information related to this accident.

Defendants contend that they are in position to provide access to relevant documentation in their possession and to ensure that their witnesses appear in Argentina, so that, if a trial were held in Argentina, there would be no "unwilling" witnesses; all United States witnesses are in some respect or another affiliated with Defendants. Id. at 10; citing Rivas, 2004 WL 1247018, at *9 (noting "company's power to compel [] attendance of [corporate witnesses]"). On the other hand, Defendants argue, if a trial were held in the United States, Plaintiffs could not assure that the multiple non-party witnesses over whom they have no control would be available to appear at trial. No United States court has the power to compel the appearance of non-party Argentine residents. Pastor Defs.' Reply at 11.

As described above, a majority of the relevant case-specific evidence including non-party witnesses and documentary evidence is, in fact, located in Argentina, beyond the subpoena power of this court, and thus this category of proof weighs heavily in favor of dismissal.

The third category of proof, evidence of damages, also tends to be found where Plaintiffs reside. "Such evidence may consist of medical, employment, and tax records as well as evidence related to Plaintiffs' pain and suffering, loss of consortium, and the like, all of which Plaintiffs would have in their possession." In re Bridgestone/Firestone, Inc.,

305 F. Supp. 2d at 935-36. For example, the Pastor Plaintiffs and decedent as well as Alonso were treated by medical personnel in Argentina.[23] Thus, evidence of damages in the cases involving Argentine residents is located in Argentina not North Carolina or Florida. The Pastor Plaintiffs have made clear that medical records related to the accident have already been translated from Spanish to English and are in the parties' possession in the United States. Pastor Pls.' Resp. 19-20. That is a start, but clearly that is not all the evidence that would have to be gathered, distilled and introduced at trial.

In similar cases which have arisen out of automobile accidents occurring in Mexico, this court has noted that "the relevance and necessity of the fact finder having a view of the accident scene, weighs in favor of dismissal. . . ." Cisneros, 305 F. Supp. 2d at 936. However, in those cases, as here, we have regarded this factor to be of less importance based on the assumption that photographs of the crash sites would be available to the North Carolina or Florida court. An Argentine court, of course, "would be aided by familiarity with [the local] topography." Piper, 454 U.S. at 242, 102 S.Ct. 252.

"Finally, we must assess the practical problems presented by trial and consider in

[23] It is unclear from the record whether Di Nanno received medical treatment for his injuries. See Pastor Exh. A at #16, #25; Exh. J - Andres Miguel Pastor's Notice of Filing Unverified Answers to Interrogatories Propounded by Defendant Ford at #16; Exh. K - Rosa Elizabeth Urdin's Notice of Filing Unverified Answers to Interrogatories Propounded by Defendant Ford at #16; Exh. L - Rosa Ignacia Phoyu's Notice of Filing Unverified Answers to Interrogatories Propounded by Defendant Ford at #16; Exh. M - Medical Report; Alonso Answers Order, MD 3288 at 4.

which forum trial could proceed most easily, expeditiously, and inexpensively. Critical to this analysis is the enforceability of the judgment." Cisneros, 305 F. Supp. 2d at 936. Defendants in both cases have agreed to "pay any final judgment rendered against them in Argentina resulting from [that] action, subject to applicable rights to contest or appeal under international and/or Argentine law." Because any judgment rendered in a United States forum also could be enforced, Defendants' concession equalizes the two forum choices with respect to this issue.

Having discussed the various private interest factors, we summarize them now with respect to these two cases:

We conclude that access to sources of proof would be greater in Argentine courts. Defendants have stipulated that they will make available in either forum documents and deposition testimony discovered through the MDL. Defendants have also agreed to satisfy any final judgment rendered by an Argentine court. Any third-party defendants and all of the documentary evidence and witnesses related to the accident, the investigation of the accident by law enforcement, the emergency medical treatment received by Plaintiffs, the service records relating to Plaintiffs' vehicles, and the measurement of Plaintiffs' damages would be located in Argentina, outside the reach of compulsory process issued in the United States. An Argentine court would also be able to view the accident scene. Although the issue of translation arises in both forums, it weighs in favor of retaining jurisdiction in the United States; even so, consistent with the weight of authority, we find that the burden of translation does not outweigh the benefit of easier

access to proof in the Argentine courts. See e.g., Zermeno v. McDonnell Douglas Corp., 246 F. Supp. 2d 646, 660 (S.D. Tex. 2003) (collecting examples of cases dismissed on grounds of *forum non conveniens* even though the bulk of evidence related to the design and manufacture of the allegedly defective product was written in English and located in the United States.). Therefore, we find that the private interest factors "clearly point towards" dismissal of these two cases which occurred in Argentina and involve Argentine residents on the basis of *forum non conveniens.*

Public Interest Factors

Next, we address the public interest factors, which include:

> the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty.

Cisneros, 305 F. Supp. 2d at 937; (citing In re Bridgestone/Firestone, Inc., 190 F. Supp. 2d at 1145; Piper, 454 U.S. at 241 n. 6, 102 S.Ct. 252).

With regard to court congestion, the burden of trial does not fall on our court and the parties have not presented us with sufficiently detailed information to permit us to make an informed comparison or attempt to balance the docket demands of the federal courts in North Carolina, Florida, or Argentina, in terms of who will suffer the greater burden from adding this trial to its workload. Thus, we conclude that this factor is neutral in the context of either the retention or dismissal of the cases. Cisneros, 305 F. Supp. 2d

at 937-38.

The respective local interests of the forums under consideration is also relevant. Argentina obviously has an interest in protecting the health and safety of its residents as well as an interest in regulating potentially dangerous products used within its borders. The United States as a whole also has an interest in regulating the conduct of companies that operate their global businesses from within the borders of the United States. However, in foreign resident cases, the Seventh Circuit has suggested that the "strong interest" of the defendant's home forum is tempered where, as here, Plaintiffs are foreign citizens and Defendants are American corporations with extensive foreign business dealings. In re Bridgestone/Firestone, Inc., 190 F. Supp. 2d at 1146 (citing Kamel, 108 F.3d at 804). "[D]omestic public policy concerns regarding consumer safety are insufficient to establish a local interest on the part of American courts sufficient to tip the second public interest factor in favor of retaining jurisdiction." Morales v. Ford Motor Co., 313 F. Supp. 2d 672 (S.D. Tex. 2004). Therefore, this public interest factor–the local interest in having localized controversies decided at home–weighs in favor of dismissal of the Argentine accident cases on our docket. Cisneros, 305 F. Supp. 2d at 938.

Related to the idea that Argentina, North Carolina and Florida all "have an interest in protecting the lives and health of their respective residents is the idea that it would not be unduly burdensome for other residents of these related forums to be pressed into jury service. Thus allocating the burden of jury duty also supports . . . dismissal of the foreign resident cases." Id. at 938; Gulf Oil, 330 U.S. at 508-09 (stating that jury duty should not

"be imposed upon the people of a community which [have] no relation to the litigation.").[24]

There is no need to undertake an intricate choice of law analysis at this point. See Cisneros, 305 F. Supp. 2d at 939 (the choice of law analysis is "complicated an ultimately unnecessary to the resolution of this motion"). However, the parties' interest in having foreign law issues determined by a court familiar with the law clearly favors dismissal. "[T]he need to apply foreign law point[s] towards dismissal." Piper, 454 U.S. at 260; see also Satz, 244 F.3d at 1284 (noting that "possibility that the district court would have to apply Argentine law to decide this case" favored dismissal of action by Argentine citizens against U.S. manufacturer).

Plaintiffs argue that United States substantive law will be applied to this case regardless of where the case is tried:

> [E]ven if this Court were to apply Argentine law, Argentine law then specifies the application of U.S. substantive law. In other words, the Argentine conflict of laws analysis requires the application of U.S. substantive law regardless of where the case is tried. Argentina would adopt and apply the laws of the country where the product was designed and manufactured, and where, under Argentine law, the contractual or tort-based duties to create a defect-free product (and warn of any defects discovered) were breached.

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[24] The Pastor Plaintiffs argue that the burden on Florida jurors would not be excessive because of Florida's relationship to liability-creating events in this case, specifically Ford's fourteen years of rollover testing of Explorers at the Florida Evaluation Center. Plaintiffs state: "The vehicle in which the Pastor family was riding was a 1995 Explorer. Ford tested its pre-1995 Explorer, and developed, tested, and refined its 1995 Explorer, at the Florida Evaluation Center." (Depo. R. Pascarella (7/13/04) 51, 52, 53)." Pastor Pls. Resp. at 37.

Pastor Pls.' Resp. at 43. Defendants disagree with this analysis, contending that the default rule in personal injury/wrongful death cases directs that the law of the locale where the injury occurred applies, unless another place has a more significant relationship to the occurrence and the parties. Pastor Defs.' Reply at 18. In this case, applying the default rule, the local law of Argentina would apply because that is where the injury occurred; and Florida, the state where Ford tested Explorer prototypes in a leased facility between 1990 and 1995, maintains a less significant relationship to the issue of liability which would not trump the default rule. Id. at 19. Defendants also disagree with Plaintiffs' conclusion that a United States court that "chose to apply Argentina's substantive law would . . . simply apply United States law." Id. Defendants explain that, if Florida's choice of law rules dictate that Argentine substantive law applies, then it matters not what law applies under Argentine choice of law rules. Id. at 19-20.

We agree with Defendants that a resolution of many, if not all, of the issues in these cases is likely to be governed by the substantive law of Argentina, which provides another a powerful reason to dismiss. Even if we were to assume that the law of a U.S. state would apply to the foreign resident cases, any difficulty an Argentine court might have in applying U.S. state law, when considered in light of the other private and public interest factors, does not clearly point toward retention of the foreign resident cases. See Cisneros, 305 F. Supp. 2d at 938-39; Gonzalez v. Naviera Neptuno, A.A., 832 F.2d 876, 879 (5th Cir. 1987) ("The administrative difficulties associated with trying a case in a forum located thousands of miles away from the majority of the witnesses and the

evidence are obvious.")

Conclusion

The Argentine Plaintiffs' cases warrant dismissal on grounds of *forum non conveniens.* The general rule holds true here–namely, that plaintiff's choice of forum which differs from his or her home forum is less convenient. This conclusion is buttressed by a weighing of the private and public interest factors. Accordingly, Defendants' motion to dismiss the case brought by Plaintiffs Juan Pablo Andres Alonso and Damian Dario Di Nanno in cause number IP-04-5796-C-B/S, and the case brought by Plaintiff Carlos Miguel Pastor et al. in cause number IP 04-5812, on *forum non conveniens* grounds is GRANTED. IT IS SO ORDERED.

Date: _____

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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